BEVERLY M. HARRIS
AMINOIL, INC.

IBLA 84-77 Decided January 10, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, revoking issuance of oil and gas lease W 84941 in part.

Vacated and remanded.

1. Oil and Gas Leases: Cancellation

It is improper to attempt to cancel an oil and gas lease in part where it has not been shown that the lease was issued in contravention of any statutory or regulatory provision, and where an assignment of the lease has previously been submitted to BLM by a bona fide purchaser, with a request for approval.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In the March 1983 simultaneous oil and gas leasing program for available lands in Wyoming, the application of Beverly M. Harris received first priority for parcel WY 225, and oil and gas lease W 84941 was issued for the 1,360 acres in the parcel, effective September 1, 1983, after being executed on behalf of the United States by the authorized officer August 15, 1983. On September 21, 1983, an assignment from Harris to Aminoil, Inc. (Aminoil), was filed for approval by the Wyoming State Office, Bureau of Land Management (BLM). The assignment bears the execution date of August 19, 1983, by Harris. The request for approval shows the execution date of September 13, 1983, by an authorized person for Aminoil. By decision of September 14, 1983, BLM purported to revoke the N 1/2 SW 1/4, SW 1/4 SW 1/4 sec. 13, S 1/2 sec. 14, T. 52 N., R. 76 W., sixth principal meridian, containing 440 acres from the issued lease W 84941, and to return those lands to the status of a pending offer to lease. The decision stated the 440 acres are within the Fortification Creek Wilderness Study Area, and inadvertently were included in the lease, contrary to BLM policy. Both Harris and Aminoil have appealed.

The appellants contend there is no statutory basis for cancellation of part of lease W 84941. They concede the Secretary of the Interior may cancel a lease administratively for invalidity at its inception, citing Boesche v.

Udall, 373 U.S. 472, 476 (1963), but they argue that is not the circumstance of lease W 84941. They point out that no provision of the Mineral Leasing Act or any other statute or any regulation was violated by the issuance of the lease. There was no statutory or regulatory prohibition against leasing in wilderness study areas until the 1984 Emergency Appropriation Bill was signed November 14, 1983. They admit that Instruction Memorandum (I.M.) 83-237 signed for BLM by the Acting Deputy Director for Energy and Mineral Resources instructed the BLM field offices that until further notice, no leases or permits should be issued in BLM administered wilderness study areas. Appellants point out that this Board has held that BLM instruction memoranda are not binding upon the Board nor on the general public, citing Emery Energy, Inc. (On Reconsideration), 67 IBLA 260, 261 (1982). So, I.M. 83-237 does not compel the conclusion that cancellation of a portion of lease W 84941 was necessary. They suggest that use of the word "revoked" in the BLM decision is tacit acknowledgement by BLM that issuance of lease W 84941 was a proper official act. Appellants concede the Secretary may, in his discretion, refuse to issue an oil and gas lease if he determines the issuance not to be in the public interest, even though the lands technically are available for leasing, citing Udall v. Tallman, 380 U.S. 1 (1964). But they point out that I.M. 83-237 is not a determination by the Secretary that oil and gas leasing within a wilderness study area is not in the public interest.

Appellants state that a "no surface occupancy" stipulation was imposed on 400 of the 440 acres "revoked", and they would accept the same stipulation on the 40 acres so that any operations on the lease will not disturb any of the wilderness study area. Thus, they argue that no sound purpose is served by the revocation.

Appellants also argue that as Aminoil is a bona fide purchaser, no part of lease W 84941 may be canceled to its detriment, citing 30 U.S.C. § 184(h)(2) (1976). They assert that Aminoil acquired its interest in the lease in good faith for a valuable consideration and without any notice of any violation of statutes or regulations in the issuance of the lease, citing Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). They allege that Harris assigned the lease to Aminoil August 19, 1983, and Aminoil paid by a check dated September 3, 1983. The assignment was transmitted to BLM for approval September 14, 1983. As was held in Southwestern Petroleum Corp., supra, it is not necessary for the assignment to be approved by BLM in order for Aminoil to qualify as a bona fide purchaser. There was nothing shown on the records of BLM on the date that lease W 84941 was issued, or on the date the consideration was paid by Aminoil for the assignment, to indicate issuance of the lease was contrary to law. Appellants contend Aminoil obtained a status report from BLM prior to paying the consideration for the assignment, and nothing in the report showed other than that lease W 84941 had been issued regularly to Beverly M. Harris. The status report made no mention of the present charge that part of the leasehold is within the Fortification Creek Wilderness Study Area. Appellants thus argue that Aminoil had no notice, constructive or otherwise, that any portion of lease W 84941 was within any wilderness study area when it purchased the lease from Harris. As a bona fide purchaser, Aminoil is entitled to assume BLM properly discharged its duties in the issuance of the lease, citing Geosearch, Inc. v. Watt, No. 82-1335 (10th Cir. Nov. 7, 1983). Finally, appellants suggest that

issuance of lease W 84941 was not improper, even under I.M. 83-237, which provides that lands in wilderness study areas contiguous to producing or prospectively valuable areas may be leased, provided they carry no surface occupancy protection and development is conducted from outside the wilderness study area. Appellants contend the portion of lease being canceled is contiguous to a prospectively valuable area and so issuance of the lease was not improper under I.M. 83-237. They reiterate their willingness to accept a "no surface occupancy" stipulation on the SW 1/4 SW 1/4 sec. 14, T. 52 N., R. 76 W., the only portion of the canceled area not already encumbered by such a stipulation.

BLM made no response to appellants' statement of reasons. The signing of an oil and gas lease by the authorized officer of the BLM is the act that constitutes issuance of the lease and creates a binding contract. A subsequent decision not to issue oil and gas leases in an area will not support cancellation of a preexisting lease. Cancellation of a lease based on post-lease events is limited to circumstances where there has been a statutory or regulatory violation of the lease terms. Carl J. Taffera, 71 IBLA 72 (1983).

The Secretary of the Interior has broad authority to cancel oil and gas leases for violations of the Mineral Leasing Act and regulations thereunder, as well as for administrative errors committed before the lease was issued; however, the Secretary's authority is limited by the bona fide purchaser amendment of the Mineral Leasing Act. 30 U.S.C. §§ 184 (a)(1), (h)(2), 188 (a), (b) (1976). Winkler v. Andrus, 614 F.2d 707 (1980). The bona fide purchaser amendment to the Mineral Leasing Act was added to protect bona fide purchasers of Federal oil and gas leases who acquired their holdings in good faith from the possible consequences of Mineral Leasing Act violations by their predecessors in title, to foster development of oil and gas resources on public lands, and to protect innocent investors and purchasers. Id. For the purpose of determining whether an assignee of a Federal oil and gas lease was a bona fide purchaser within the meaning of the Mineral Leasing Act, it was the date of the assignment which was critical as to the bona fides of the assignee. Id. In order for an assignee of a Federal oil and gas lease to be protected as a bona fide purchaser, examination of the BLM records must be made; however, assignees are not required to go outside the records relating to the particular parcel of land assigned, which records are kept in the BLM State Office. Id. The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. Fortune Oil Co., 69 IBLA 13 (1982); Husky Oil Co., 52 IBLA 41 (1981).

[1] In the instant case, there was no indication in the posting of parcel WY 225 that part of the parcel was included in a wilderness study area. Similarly, there was no indication of such when the lease was issued, nor in the status report which BLM gave to the prospective assignee of the lease. Except for 40 acres, all the land now shown to be in the wilderness study area, included in oil and gas lease W 84941, was subjected to a "no surface occupancy" stipulation. Appellants have stated they would accept such a stipulation for the 40 acres.

Nothing in the record before us reflects any violation of any statute or regulation in the issuance of lease W 84941. Furthermore, the record fully

supports that Aminoil is a bona fide purchaser. Accordingly, we must hold that the purported cancellation of part of oil and gas lease W 84941 was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated, and the case remanded for further appropriate action.

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Douglas E. Henriques
Administrative Judge

We concur:

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Will A. Irwin
Administrative Judge

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Edward W. Stuebing
Administrative Judge